

**COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT**

Barnstable Division

Case #1572CV0335

**CHRISTOPHER W. KANAGA
ET AL, Plaintiffs**

V.

**SHELDON MANUEL,
Defendant**


**DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE
TO PRECLUDE RAISING EVIDENCE
OF MR. KANAGA'S MEMBERSHIP
IN THE COMMUNITY OF JESUS**

Now comes the Defendant, through Counsel, and opposes the Plaintiffs' Motion in Limine to Preclude the Defendant from introducing evidence relating to Mr. Kanaga's membership in the Community of Jesus.

In support of this opposition, the Defendant refers to the argument and supporting Exhibits filed with her Motion in limine to permit evidence relating to Mr. Kanaga's membership and activities in the Community of Jesus. All of said pleading is adopted as if set forth herein by reference.

WHEREFORE, the Defendant requests that the Plaintiffs' Motion in Limine be denied.

The Defendant,
By her Attorney,



William J. Pudlo
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Wilbraham, Mass. 01095
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BBO #407640

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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

Barnstable Division

Case #1572CV0335

CHRISTOPHER W. KANAGA)
ET AL, Plaintiffs)

V.)

SHELDON MANUEL,)
Defendant)DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE
ESTABLISHING THAT DEFENDANT'S
STATEMENTS ARE NOT PROTECTED
OPINION

Now come the Defendant, through Counsel, and opposes the Plaintiffs' Motion in limine to establish that Defendant's statements are not protected opinion. -1-

In the same way, as argued in opposition to the Plaintiffs' Motion in Limine to declare the Defendant's alleged posting as libel per se, the core of this Motion is hardly different. Thus the argument that even by the standard referred to in the Plaintiffs' Motion, the nature and meaning of any allegedly defamatory remarks that are subject to interpretation raises a question of fact for the Jury. *King v. Globe Newspaper Co.*, 400 Mass. 705 (1987) Contrary to the Plaintiffs' conclusion that there is no question of fact, the circumstances surrounding the alleged publication have not been brought into evidence, thus it is premature to make a determination of not protected opinion.

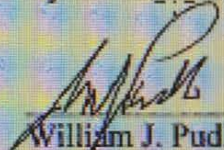
Throughout these proceedings the Defendant has asserted that this case is only one component of a design to attack her since she has sought to assert her position as the surviving spouse of her late husband's estate. She has continually asserted that her computer, phones and electronic devices have been hacked. Her opinion is that the Plaintiff has orchestrated this action.

Further, the fact that many of the alleged statements attributable to the Defendant are merely strongly opinionated averments does not make them unprotected statements. Once again, this is a fact issue not a question purely one of law. *King, supra*.

In like manner to the argument made in Plaintiffs' Motion in Limine to establish Defamation per se, once a claim of privilege is raised, the burden of proof is upon the Plaintiff to demonstrate by a preponderance of the evidence that there are no facts to support such a position. In addition, there has been no showing by the Plaintiffs that there is some component of malice on the part of the Defendant. *Millenium Equity Holdings, LLC v. Mahlowitz, 456 Mass. 627 (2010); Hartman v. BostonHerald-Traveler Corporation 323 Mass. 56(1948)*

WHEREFORE, the Defendant requests that this Court deny the Plaintiffs' Motion.

The Defendant,
By her Attorney,

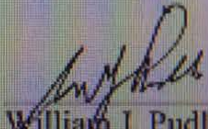


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Certificate of Service

I, William J. Pudlo, hereby certify that I have served a copy of the above pleading upon the Plaintiffs by sending an electronic copy of the same and by mailing a copy of the same, postage prepaid, to opposing Counsel.

Dated: January 31, 2019



William J. Pudlo

**COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT**

Barnstable Division

Case #1572CV0335

**CHRISTOPHER W. KANAGA)
ET AL, Plaintiffs)**

V.)

**SHELDON MANUEL,)
Defendant)**

**DEFENDANT'SD OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE
TO ADMIT FACEBOOK POTOS AS
AUTHENTICATED AND ADMISSIBLE**

Now comes the Defendant and opposes the Plaintiffs' Motion in limine to admit the June 4, 2015 Facebook Posting as authenticated and admissible.

Basically, the Defendant relies upon the documents received from Facebook pursuant to an Order of this Court negotiated by the parties at Court. The response of Facebook, as shown in Plaintiffs' Exhibit "F" consists of a single page that shows an active account for the Defendant. There is no verification or authentication of the alleged posting. Facebook does not verify that the Defendant made the alleged posting or even that it appeared on her Facebook account page.

What the Plaintiffs attempt to accomplish is to attach a large number of unrelated documents to their Motion and suggest that the sheer volume of the paper demonstrates they are correct. The Exhibits, including the papers filed in California simply did not provide the "smoking gun" they hoped for by way of a tacit statement from Facebook that the alleged posting was done by the Defendant.

There is no way that the response from Facebook authenticates any documents. It simply states that there is an active account.

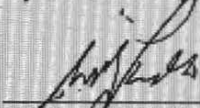
Based upon the documents provided by Facebook, the Plaintiffs fall woefully short of providing this Court with clear evidence of the authenticity of the alleged posting. Add to that

the Defendant's assertion that she was under medical care following surgery and under the influence of opioids that clouded her memory and mind, there is no basis for the allowance of the Plaintiffs' Motion.

Finally, to address the assertion that the "operative words" doctrine applies in this case, the Defendant urges this Court to simply apply the customary hearsay rules. Unless a document is authenticated by a valid source, it cannot have the weight of an "operative" basis for proof. The Plaintiffs make no showing of evidence that supports this position. They simply offer statements by the Defendant which is shrouded in assertions of medical stress, post-operative medication foginess. In the face of the averment that she was unable to clearly recall any such posting, the Plaintiffs are left to their proof. The posting, unless authenticated, should be treated as any hearsay and rejected. *See Shimer v. Foley, Hoag & Elliot, LLP, 59 Mass. App. Ct. 302 (2003)*

WHEREFORE, the Defendant requests that this Court deny the Plaintiffs' Motion in Limine to admit as authenticated, the alleged Facebook posting of June 4, 2015.

The Defendant,
By her Attorney,



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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

Barnstable Division

Case #1572CV0335

CHRISTOPHER W. KANAGA)
ET AL, Plaintiffs)

V.)

SHELDON MANUEL,)
Defendant)

DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE
SEEKING TO ESTABLISH THAT
DEFENDANT'S STATEMENTS ARE
DEFAMATORY PER SE

Now comes the Defendant, through Counsel, and opposes the Plaintiffs' Motion in limine establishing the Defendant's statements as defamatory, per se.

It appears from the Plaintiffs' opening argument in their Motion that they believe that their determination that the alleged statements are defamatory per se is sufficient to have this Court rule that there is no need for any trial of fact since they say so and thus "we win".

What this approach entails is a refusal to examine the case in its entirety, including each and every applicable factual situation bearing upon the case before the Court. Even by the standard referred to in the Plaintiffs' Motion, the nature and meaning of any allegedly defamatory remarks that are subject to interpretation raises a question of fact for the Jury. *King v. Globe Newspaper Co.*, 400 Mass. 705 (1987) Contrary to the Plaintiffs' conclusion that there is no question of fact, the circumstances surrounding the alleged publication have not been brought into evidence, thus it is premature to make a determination of defamation per se.

Further, in order to make an unequivocal determination that an alleged statement is defamatory per se, there must be some showing of a recklessness that rises to a level of tortious conduct allowing a Court to make the determination of a per se act. *Forbush v. City of Lynn*, 35 Mass. App. Ct. 696 (1994)

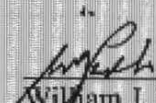
There is also the issue of the Defendant's claim of privilege based upon what she may have formed the way of an opinion, which, in of itself is not defamation per se. It also appears that there are many factual determinations that must be made before the Court can reach the conclusion sought by the Plaintiffs. *See Myers v. Boston Magazine Co., Inc.*, 380 Mass. 336 (1980)

It also appears that once a claim of privilege is raised, the burden of proof is upon the Plaintiff to demonstrate by a preponderance of the evidence that there are no facts to support such a position. In addition, there has been no showing by the Plaintiffs that there is some component of malice on the part of the Defendant. *Millenium Equity Holdings, LLC v. Mahlowitz*, 456 Mass. 627 (2010); *Hartman v. BostonHerald-Traveler Corporation* 323 Mass. 56(1948)

In summary, the Plaintiffs, in their Motion, raise more factual issues, including tangential matters related to the Cohasset Police Department, that appear to have no substantial relevance to this case. Under such a weight of factual issues that need to be determined before any conclusions can be drawn, the Motion must be denied and the Plaintiffs put to their proof.

WHEREFORE, the Defendant requests this Court to deny the Plaintiffs' Motion in Limine.

The Defendant,
By her Attorney,



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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

**SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1572-00335**

**CHRISTOPHER KANAGA and
LARAJA & KANAGA, P.C.,
Plaintiffs,**

v.

**SHELDON MANUEL,
Defendant.**

AGREED-UPON TRIAL EXHIBIT LIST

1. Facebook Post by Sheldon Manuel dated June 4, 2015 (8/23/16 Manuel Depo Exhibit 1)
2. Sheldon Manuel LinkedIn Page (8/23/16 Manuel Depo Exhibit 2)
3. Email from Sheldon Manuel to Carrie Buddington dated January 1, 2016 (8/23/16 Manuel Depo Exhibit 7)
4. Handwritten Fax to the attention of Duty Agent (8/23/16 Manuel Depo Exhibit 11)
5. Fax from Sheldon Manuel to Jeffrey Robbins (8/23/16 Manuel Depo Exhibit 12)
6. Email from Sheldon Manuel to her counsel dated April 30, 2014 (8/23/16 Manuel Depo Exhibit 13)
7. Email from Sheldon Manuel (8/23/16 Manuel Depo Exhibit 14)
8. Fax dated August 4, 2015 to Court requesting investigation (8/23/16 Manuel Depo Exhibit 15)
9. Awakening Unlimited Web Publishing (8/23/16 Manuel Depo Exhibit 17)
10. IRS Form 990 Return of Organization Exempt from Income Tax 2013 (8/23/16 Manuel Depo Exhibit 19)
11. Facebook Certificate of Authenticity of Domestic Records of Regularity Conducted Activity
12. Photographs of Christopher Kanaga

13. Email from Sheldon Manuel to Carrie Buddington dated January 1, 2015 (9/8/2015
Carrie Buddington Deposition Exhibit 1 Excerpt)

14. Draft Affidavit of Carrie Buddington